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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
13 Against:

14 **MICHAEL ROBERT STADER**
15 **338 North Allen Street**
Madison, WI 53726

16 Respondent.

Case No. 2011-684

STATEMENT OF ISSUES

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
21 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about February 10, 2010, the Board of Registered Nursing, Department of
24 Consumer Affairs received an application for a Registered Nurse License from Michael Robert
25 Stader (Respondent). On or about January 21, 2010, Michael Robert Stader certified under
26 penalty of perjury to the truthfulness of all statements, answers, and representations in the
27 application. The Board denied the application on August 13, 2010.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3)(A) Done any act that if done by a licentiate of the business or profession
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the
4 crime or act is substantially related to the qualifications, functions or duties of the
5 business or profession for which application is made.

6

7 (c) A board may deny a license regulated by this code on the ground that the
8 applicant knowingly made a false statement of fact required to be revealed in the
9 application for the license.

10 7. Section 2761 of the Code states:

11 The board may take disciplinary action against a certified or licensed nurse or
12 deny an application for a certificate or license for any of the following:

13 (a) Unprofessional conduct, which includes, but is not limited to, the
14 following:

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16 (f) Conviction of a felony or of any offense substantially related to the
17 qualifications, functions, and duties of a registered nurse, in which event the record of
18 the conviction shall be conclusive evidence thereof.

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20 8. Section 2762 of the Code states:

21 In addition to other acts constituting unprofessional conduct within the meaning
22 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
23 licensed under this chapter to do any of the following:

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25 (b) Use any controlled substance as defined in Division 10 (commencing with
26 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
27 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
28 dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption,
or self-administration of any of the substances described in subdivisions (a) and (b) of
this section, or the possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which event the record of
the conviction is conclusive evidence thereof.

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REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

10. California Code of Regulations, Title 16, section 1445 states:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

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FIRST CAUSE FOR DENIAL OF APPLICATION

(March 14, 2008 Criminal Convictions for Driving Intoxicated on February 16, 2008)

11. Respondent's application is subject to denial under sections 480, subdivisions

(a)(1) and (a)(3)(A), and 2761, subdivision (f) of the Code in that he was convicted of crimes that are substantially related to the qualifications, duties, and functions of a registered nurse. The circumstances are as follows:

1 a. On or about March 14, 2008, in a criminal proceeding entitled *State of*
2 *Wisconsin v. Michael R. Stader*, in Dane County Circuit Court case numbers 2008TR003588 and
3 2008TR003589, Respondent was convicted on his plea of no contest to violating Wisconsin
4 Statutes 346.63, subdivision (1)(a), operating a motor vehicle while intoxicated (OWI), and
5 346.63, subdivision (1)(b), driving with a prohibited alcohol content (PAC) of 0.10 percent or
6 higher, misdemeanors.

7 b. As a result of the convictions, on or about March 14, 2008, Respondent's
8 driver's license was revoked for seven months and he was ordered to complete an alcohol
9 assessment and pay fines. Seven months later, Respondent was cited for driving on a revoked
10 license.

11 c. The facts that led to the conviction are that on or about the early morning
12 of February 16, 2008, an officer with the City of Middleton Police Department observed
13 Respondent, who was driving an SUV, operating the vehicle in an unsafe manner and swerving in
14 his lane. The officer continued to follow while Respondent accelerated to a speed of
15 approximately 80 mph in a 40 mph speed zone. The officer conducted a traffic stop and was
16 joined by a second officer. The officer noted a strong odor of intoxicants on Respondent's breath,
17 his speech was slurred, and his eyes were glassy and bloodshot. Respondent admitted to drinking
18 five beers at a bar earlier in the evening. Respondent was given a series of field sobriety tests
19 which he failed to perform as explained and demonstrated. Respondent submitted to a
20 preliminary breath test which yielded a reading of .248 percent blood alcohol concentration
21 (BAC). A search of Respondent's vehicle revealed an open beer bottle in the front center console
22 of Respondent's SUV with approximately one-inch of beer remaining in the bottle. Respondent
23 was arrested and transported to the police department where he provided two additional breath
24 samples with a result of .20 percent BAC.

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1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 **(Unprofessional Conduct – Use of Alcohol in an Unsafe Manner)**

3 12. Respondent's application is subject to denial under sections 480, subdivision
4 (a)(3)(A); 2761, subdivision (a); and 2762, subdivision (b) of the Code in that on or about
5 February 16, 2008, as detailed in paragraph 10, above, Respondent used alcohol to an extent that
6 was potentially dangerous or injurious to himself or the public when he operated a motor vehicle
7 while substantially intoxicated.

8 **THIRD CAUSE FOR DENIAL OF APPLICATION**

9 **(Unprofessional Conduct – Conviction of an Alcohol-Related Offense)**

10 13. Respondent's application is subject to denial under sections 480, subdivision
11 (a)(3)(A); 2761, subdivision (a); and 2762, subdivision (c) of the Code in that on or about March
12 14, 2008, as detailed in paragraph 10, above, Respondent was convicted of an offense involving
13 the consumption of alcohol to a dangerous degree.

14 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

15 **(August 17, 2009 Criminal Conviction for Disorderly Conduct on June 21, 2009)**

16 14. Respondent's application is subject to denial under sections 480, subdivisions
17 (a)(1) and (a)(3)(A); and 2761, subdivision (f) of the Code in that he was convicted of a crime
18 that is substantially related to the qualifications, duties, and functions of a registered nurse. The
19 circumstances are as follows:

20 a. On or about August 17, 2009, in a criminal proceeding entitled *State of*
21 *Wisconsin v. Michael R. Stader*, in Grant County Circuit Court case number 2009FO000707,
22 Respondent was convicted on his plea of no contest to violating Wisconsin Statutes 947.01,
23 disorderly conduct, a Class B misdemeanor.

24 b. As a result of the conviction, on or about August 17, 2009, Respondent was
25 fined \$249.

26 c. The facts that led to the conviction are that on or about the early morning of
27 June 21, 2009, the Platteville Police Department was called to break up a fight at an apartment
28 complex. Police arrived to find three males, including Respondent, who had been involved in a

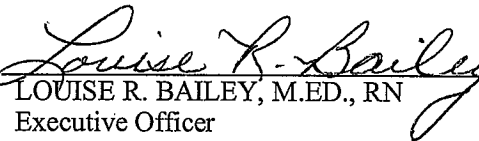
1 physical altercation. Based on statements from witnesses, Respondent and a companion were
2 talking to two females outside of the apartment complex when the husband of one of the females
3 drove up. The female's husband exited his vehicle and charged at Respondent and his friend. A
4 fight ensued which eventually broke up when the police arrived. Respondent was taken into
5 custody and transported to the police station. The police report described Respondent as rude,
6 uncooperative, argumentative, and belligerent; he refused to provide his fingerprints or allow
7 himself to be photographed. He was charged with disorderly conduct and released.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Registered Nursing issue a decision:

- 11 1. Denying the application of Michael Robert Stader for a Registered Nurse License;
- 12 2. Taking such other and further action as deemed necessary and proper.

13 DATED: 2/4/2011


14 LOUISE R. BAILEY, M.ED., RN
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
19 Complainant

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